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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Inter application of

Mirta Mable Fasci and
Luis Orlando de Jesus Pittau

Appln. No.: 09/009,327

Group Art Unit: 3727

Filed: January 20, 1998

Examiner: Moy, J.

For: MODULAR CONTAINER THAT CAN BE INTERCONNECTED,
FOR MULTIPLE USES

Attorney Docket No.: 3881.012

BRIEF ON APPEAL

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TC 3100 MAIL ROOM

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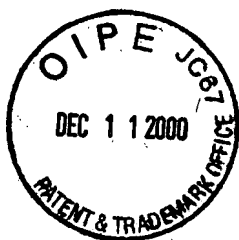


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REAL PARTY IN INTEREST

The real party in interest is Mirta Mable Fasci and Luis Orlando de Jesus Pittau.

RELATED APPEALS AND INTERFERENCES

None.

STATUS OF CLAIMS

Claims 1-32 were originally filed in this Application. Applicant was required by the Examiner to elect a single disclosed species for prosecution. Applicant elected the species of Figs. 1-12A, Claims 1-3, 7-12, 15-22 and 24. Claims 33-37 were added by amendment. Claims 1-3, 7-12, 15-22, 24 and 33-37 are pending and are a part of this appeal. Claims 4-6, 13, 14 and 23 were withdrawn from consideration.

STATUS OF AMENDMENTS

Amendment under 37 C.F.R §1.116 filed on October 11, 2000 was considered but not deemed to place the application in condition for allowance.

SUMMARY OF THE INVENTION

The present invention on appeal relates to a plurality of modular containers that can be reutilize once the initial material of the container has been emptied, to create a varitey of structures. Each of the containers can be interconnected with another of the containers (page 3, lines 22-24) by coupling the plurality of modular containers through an engaging means of retentive fit that prevents the modular elements from spontaneous disconnecting (page 5, lines 3-4). The modular containers have a bottom wall, a top wall and lateral walls. All wall have a means for lateral and top interconnection with

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other containers of the same structure. The containers may be coupled along the lateral walls and at the top and bottom of the modular containers. Also, the top wall, of the preferred embodiment of the containers, has a neck with an annular cord that engages an annular groove within the bottom wherein the engagement between the annular cord and the annular groove work as a retentive rim to prevent de-coupling of the top and bottom of the modular containers that are coupled to create the structural groups.

The preferred method of coupling is in a cylindrical way because it has the advantage of allowing the coupled containers to be easily rotated (page 13, lines 3-5). The lateral faces have a slotted or grooved design to allow greater coupling retention and to facility the exiting of any air during the coupling. Air is known to cause spontaneous disengagement of the containers (page 13, lines 19-24).

Each of the modular containers are empty containers that are capable of being filled with sand or another appropriate pulverulent or granulated material (page 4, lines 11-13) prior to being coupled with other containers.

ISSUES

1. Whether Claims 1-3, 7-12, 15-22, 24 and 33-37 are definite under 35 U.S.C. 112, second paragraph.
2. Whether Claims 1-3, 7-12, 15-22 and 24 are clearly anticipated by Troy under 35 U.S.C. 102(b).
3. Whether Claims 1 and 33-37 properly objected under 35 U.S.C. 132 for introducing new matter.

GROUPING OF CLAIMS

Claims 1-3, 7-12, 15-22 and 24 are grouped together
Claims 33-37 are grouped together.

ARGUMENT

Appellant respectfully submits that the present invention, modular container, has incorporated a novel feature to (1) provide a reusable container that when coupled to another like container will not spontaneously disengagement, and (2) provide a reusable container that can be used as a construction component when refilled with pulverulent or granular material prior to coupling with other like containers. The prior art reference is not concerned with whether its modular structures are reusable for the creation of building various large public use structures. Structures that if not properly secured, would be come dangerous for persons to be in, around or under.

Troy does not have a means to prevent spontaneous disengagement of its modular structures when interconnected.

A. Examiner's Position

1. Claims 1-3, 7-12, 15-22, 24 and 33-37 are indefinite under 35 U.S.C. 112, second paragraph.

According to the Examiner the claims do not particularly point out and distinctly claim the subject matter which applicant regards as the invention. Further, the Examiner stated that amended Claim 1 and newly added Claims 33-37, are not readable on the elected species of Figs. 1-12A.

2. The invention is clearly anticipated by Troy under 35 U.S.C. §102(b), which shows all the structure of the devices, including the connectors.

The Examiner states that the connectors of Applicant's invention are clearly shown by Troy.

3. Claims 1 and 33-37 introduce new matter as defined under 35 U.S.C. 132 and is not supported by the original disclosure.

The Examiner states that limitation of "preventing the container from rotating at the cover when the cover is coupled with the cavity of the bottom," is new matter.

B. Appellant's Arguments

1. One of ordinary skill in the pertinent art, when reading the claims, would have been able to ascertain the particular area set out and circumscribed by the claims. Further, the drawings may be used like the written specification.

The structure of Applicant's invention at Figure 1A clearly showed the cord (7), though not numbered, projecting from the neck (5) of the modular container. The Applicant in responding to the Examiner's 102(b) rejection amended Claim 1 to include the cord because this feature is not apart of the modular structure of Troy. The Examiner wrongfully considered the feature of the amendatory language new matter because the Applicant did not name the cord with the same first term as set out in the specification. The language of Claim 1 is termed new matter because certain terms were not identically used when used in association with the main terminology of the novel features of the modular containers. However, the inventor is permitted to be his own lexicographer for the feature shown in the drawing, therefore any difference in the partial naming of a term where the main thrust of the term is clearly shown by the specification and the drawing should be permitted. It is well established that the invention claimed need not be described *ipsis verbis* in order to satisfy the disclosure requirement of § 112. *Ex parte Holt*, 19 USPQ 2d 1211, 1213 (B.P.A.I. 1991).

However, it is clear from the specification, page 5, lines 1-4 that this feature existed as part of Applicant's modular container as originally claimed in the specification. Also, as claimed after the election of the species of Figures 1-12A for continued prosecution. Further, applicant would strongly contend that one of ordinary skill in the pertinent art would have ascertained, that it would be inherent for the bottom of a corresponding like modular container to have a groove (7') for receiving the cord (7). Further, that incorporation of the groove feature into the claim is supported by the original disclosure.

The entire thrust of Applicant's invention is that the modular containers can be refilled with material such as, sand, water or other granular material then interconnected for the construction of other structures. The newly built structures would be in close proximity to living creatures. Therefore, it is most important that the modular containers, once interconnected, **do not spontaneously disconnect**. The only way this can be achieved is if there is a means that causes the parts to remain coupled once filed. The Examiner would have us believe that since Figures 1A through 12A do not show an example of top and bottom coupling of Applicant's containers, the features cannot be presented in the claims as amended.

The Applicant relies on *In re Miskinyar*, 28 USPQ 1789, 1790 (Fed. Cir. 1993) (Unpublished) ("the drawings may be used like the written specification to provide evidence relevant to claim interpretation.") Thus, in a proceeding in the PTO the claims must be given their broadest reasonable interpretation consistent with the drawings as well as the specification.

Furthermore, clearly as set out on page 14, lines 17-24 the preferred embodiment of Applicant's invention has the cord (7) and the groove (7'). Although, Figure 1A is not referenced on

this page, one having ordinary skill in the art would interpret the feature as being on all containers of the invention.

In connection with the final rejection of Claims 33-37, Applicant states that the amendatory language of Claim 1 appears as new language in Claim 33. In response, Applicant re-asserts that for the same reasons as stated above the language is not new matter.

For the above reasons, no new matter is introduced into the specification or claims, and, therefore, all claim language recited in the instant claims on appeal must be considered in determining patentability.

2. The actual teachings of Troy.

The elements of Troy are blocks structured to be **assembled in a removable, interlocking, and mating relationship with each other**. The blocks, on certain portions of their periphery have, female members (indentations) and male members (projections). The configuration allows male members of one block to frictionally engage the female members of another similar block. The shape and the form of the blocks of Troy may vary depending on the structure to be created. Preferably in Troy the members are held in a position such that the plans drawn tangent to the entrance to each of the female portions of a given block and the planes drawn tangent to the training portion of each male members carried on the same block will all lie on the surfaces of a right-angled parallelepiped.

Troy addresses the problem of re-usable containers for household items such as various liquid soaps, food products, and dry goods for external and internal human and animal use. Specifically, for use with items that can be stacked on a counter, in a cabinet, or other such storage location.

The primary focus of Troy is to provide interconnecting block containers that are usable as a toy or container of storage for house hold products or like items. Further, Troy is not concerned with the strength of the interconnection between the containers and makes no claim to such.

3. Troy's failure to teach a retentive rim to prevent spontaneous de-coupling.

In order for Troy to anticipate Applicant's invention, it must disclose each and every element of the Applicant's claimed invention, arranged as in the claim. *Lindemann maschinenfabrik GmgH v. American hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984).

Applicant states that Troy does not teach or enable the top and bottom of its modular blocks to be coupled in a manner such that there is not spontaneous disengagement of the blocks. Nor does Troy describe the most important feature of Applicant's invention. Specifically, an engaging means that operates as a retentive rim like the interaction between the cord (7) and groove (7') of Applicant's modular containers.

Troy teaches a block structure wherein all male and female members on the periphery of the structure are designed to interlock one with the other. While, applicant chose to use a different means to interconnect the top and the bottom of corresponding modular structures of his invention. The method is required because Applicant's modelers containers will be used to create modular blocks that are useful to build structures that would house people and animals, playground equipment and other like structures. There is no suggestion in Troy that his blocks would be used for building/construction purposes. Troy only seeks to use his containers with house hold items.

The Examiner's position that Troy teaches all of the

connectors of Applicant's invention ignores the cord (7) that is shown in Figure 1A of the drawings. This feature is a novel addition to modular containers and allows their useful purpose to be expanded beyond the scope of use set out in Troy.

Claims 2, 3, 7-12, 15-22 and 24 depend upon Claim 1 and are considered allowable by virtue of their dependancies.

Troy does not teach each element of Applicant's invention and does not describe the most important features of Applicant's invention. For the above reason, the claims are allowable over the reference.

4. Claims 1 and 33-37 are supported by the original disclosure.

In the Examiner's rejection of the above claims it is stated that the amendatory language is not readable on the elected species of Figures 1A - 12A. Applicant contends that only a portion of the amendatory language is objectionable and withdraws that language from consideration as an issue for appeal. Applicant contends that the objectionable language is as follows: "memory preventing rotation of the modular containers about the means of interconnection."

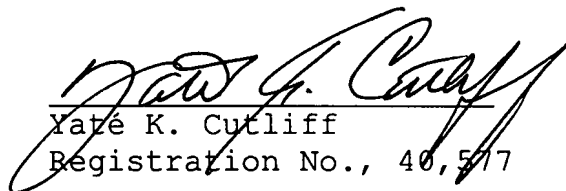
Further, Applicant states that all remaining amendatory language included in Claims 1 and 33-37 is not new matter for the reasons set out under 1 of Applicant's arguments above.

CONCLUSION

For the extensive reasons advanced above, Appellant respectfully contends that each claim is patentable. Therefore, reversal of all rejections is courteously solicited.

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BRIEF ON APPEAL

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APPENDIX

1. A plurality of modular containers that can be interconnected, for multiple uses and reutilization, each said container comprising:

a bottom surface, a top surface, and lateral walls that are joined to one another via the bottom surface and the top surface; and said top surface having a prolonged neck delimiting an access mouth to an interior of said container, said access mouth being shutable using a cover that can be removed; wherein

the lateral walls and the bottom and top surfaces possess means for lateral and top and bottom interconnection with others of the plurality of modular containers to compose structures of all types and applications,

the prolonged neck has a ring cord projecting from the periphery thereof, the ring cord is wider than the cover and has a ring groove memory that works as a retentive rim at the means for interconnection which includes compatible recesses and salients and of reciprocal fit through engaging pressure, the ring groove memory preventing rotation of the modular containers about the means of interconnection.

2. A plurality of modular containers that can be interconnected, in accordance with claim 1, wherein the means for lateral interconnection are recesses and salients conformed in the lateral walls of the container as male-female engaging means, compatible to each other and disposed along said walls, and one lateral wall has recesses and the adjacent lateral wall has salients.

3. A plurality of modular containers that can be interconnected, in accordance with claim 2, wherein the means for lateral interconnection are guided in the longitudinal sense of the container for reciprocal joining of the modular containers.

7. A plurality of modular containers that can be interconnected, in accordance with claim 2, wherein the means for top interconnection includes a salient conformed in the top surface of the container, compatible with recesses conformed in the bottom surface an external cavity, as male-female engaging means among said top surface of each container with regard to said cavity of the bottom surface of another similar container.

8. A plurality of modular containers that can be interconnected, in accordance with claim 2, wherein the compatible salients and their recesses are circular.

9. A plurality of modular containers that can be interconnected, in accordance with claim 2, wherein the compatible salients and their recesses are alternate nerves with straight recesses.

10. A plurality of modular containers that can be interconnected, in accordance with claim 7, wherein the means for top interconnection of a container with the cavity and central depression in the bottom of another container of similar characteristics include a neck born in the top shoulder of the containe, starting from a surrounding cord that is projected to form an annular tooth of retention against an annular groove, compatibly provided by the cavity of the bottom surface.

11. A plurality of modular containers that can be interconnected, in accordance with claim 7, wherein the top surface of the container, conforming shoulders on the top surface toward a proximal extremity gradually reduces its traverse section, ending the formation of the neck; while the top and its neck includes a cavity of size and form compatible with the shoulders and that includes a central depression compatible with the admission of the neck of another container of similar characteristics.

12. A plurality of modular containers that can be interconnected, in accordance with claim 11, wherein the shoulders are rounded convex.

15. A plurality of modular containers that can be interconnected, in accordance with claim 2, wherein the external cavity of the bottom surface is rounded concave, and includes a central depression compatible with the neck of the container; and an adjacency area among the central depression and said cavity of the bottom surface, and which includes an annular groove compatible with an annular cord of the neck.

16. A plurality of modular containers that can be interconnected, in accordance with claim 9, wherein the cavity of the bottom surface is infundibuliform with a concave portion in the form of a cone trunk including a central depression compatible with a neck of another bottle of similar characteristics and an annular groove, in turn compatible to a retentive fit of an annular cord of the outer compatible bottle which is connectable to the same.

17. A plurality of modular containers that can be interconnected, in accordance with claim 9, wherein the cavity of the bottom surface is infundibuliform with a concave portion in a concave trunk-pyramidal shape, provided of a central depression compatible with the neck of the bottle.

18. A plurality of modular containers that can be interconnected, in accordance with claim 9, wherein the central depression of the concave bottom is in size and shape compatible with that of the neck and an annular cord of the container and its cover.

19. A plurality of modular containers that can be interconnected, in accordance with claim 15, wherein the central depression of the concave bottom is in size and shape compatible with that of the neck and an annular cord of the container lacking its cover.

20. A plurality of modular containers that can be interconnected, in accordance with claim 19, wherein said central cavity of the concave bottom is inwardly provided with a threaded portion compatible with a threaded portion of the neck of the bottle.

21. A plurality of modular containers that can be interconnected, in accordance with claim 19, wherein the central cavity of the concave bottom is in size and shape compatible with that of the neck of the container without its cover, although with a slightly smaller interior diameter to the exterior of said neck; so that the male-female interconnection among the mentioned neck of a bottle, and the central cavity

provided by the bottom of another bottle is able to take place by a forced fit through engaging pressure.

22. A plurality of modular containers that can be interconnected, in accordance with claim 19, wherein the central cavity of the concave bottom is in size and shape compatible with that of the neck of the container without its cover, although provided of nerves that an interior diameter slightly reduced respecting the exterior of said neck; so that the male-female interconnection among the mentioned neck of a container, and the central depression provided by the bottom of another bottle is able to take place due to a forced fit through engaging pressure.

24. A plurality of modular containers that can be interconnected, for multiple uses in accordance with claim 1, wherein a traverse section of the container is square and is defined by the lateral walls provided of the interconnection means with other bottles of similar characteristics.

33. A method of forming block modulars from a plurality of modular containers that can be interconnected, for multiple uses and reutilization, comprising the steps of:

gathering and cleaning a plurality of disposable containers being modular containers and including a bottom surface, a top surface, and lateral walls that are joined to one another via the bottom surface and the top surface;

said top surface having a prolonged neck delimiting an access mouth to an interior of said container, said access mouth being shutable using a cover that can be removed; wherein said lateral walls and said bottom and top surfaces possess means for lateral and top and bottom interconnection with others

of the plurality of modular containers to compose structures of all types and applications;

said prolonged neck has a ring cord projecting from the periphery thereof, said ring cord is wider than said cover and has a ring groove memory that works as a retentive rim at a means for interconnection which includes compatible recesses and salients and of reciprocal fit through engaging pressure, said ring groove memory preventing rotation and spontaneous decoupling of the modular containers about the means of interconnection;

filling the interior of said plurality of modular containers via the access mouth of each container with a padded material;

sealing the padded material within the plurality of modular containers by coupling said cover with said prolonged neck;

connecting the lateral walls of the plurality of modular containers by interconnecting the means for lateral interconnection along a longitudinal sense of the plurality of modular containers to form a structural group; and

connecting said bottom surface of said plurality of modular containers with said top surface of said plurality of modular container to cause said structural group to form walls.

34. The method of forming block modulators in accordance with claim 33, wherein the means for lateral interconnection are recesses and salients conformed in the lateral walls of the container as male-female engaging means, compatible to each other and disposed along said walls, and one lateral wall has recesses and the adjacent lateral wall has salients.

35. The method of forming block modulators in accordance with claim 33, wherein the means for top interconnection

includes a salient conformed in the top surface of the container that is compatible with recesses conformed in the bottom surface as an external cavity, as male-female engaging means among said top surface of each container with regard to said cavity of the bottom surface of another similar container.

36. The method of forming block modulars in accordance with Claim 35, wherein the means for top interconnection of a container with the cavity and central depression in the bottom of another container of similar characteristics include a neck born in the top shoulder of the container, starting from a surrounding cord that is projected to form an annular tooth of retention against an annular groove, compatibly provided by the cavity of the bottom surface.

37. The method of forming block modulars in accordance with Claim 35, wherein the top surface of the container, conforming shoulders on the top surface toward a proximal extremity gradually reduces its traverse section, ending the formation of the neck; while, the bottom surface has a female connection means with the top and its neck includes a cavity of size and format compatible with the shoulders, and that includes a central depression compatible with the admission of the neck of another container of similar characteristics.